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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

NCR CORPORATION,

Petitioner,

v.

TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of New Mexico

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BRIEF IN OPPOSITION

BRUCE J. FORT
FRANK D. KATZ
Sp. Asst. Attys. General
Taxation and Revenue Dept.
P.O. Box 630
Santa Fe, NM 87509

TOM UDALL
New Mexico
Attorney General
DANIEL YOHALEM
Counsel of Record
Asst. Atty. General
P.O. Drawer 1508
Santa Fe, NM 87504
(505) 827-6070

Counsel for Respondent

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QUESTIONS PRESENTED

1. Whether a state may, consistent with the Foreign Commerce Clause, include in income subject to apportionment for income tax purposes dividends, interest and royalties earned from unitary foreign subsidiaries by U.S. corporations doing business in the state?

2. Whether the Due Process or Commerce Clauses require states, when applying the three-factor apportionment formula to a U.S. corporate taxpayer, to include in the apportionment formula all the property, payroll and sales factors of the taxpayer's foreign subsidiaries where: (a) the state does not tax the incomes of the foreign subsidiaries; (b) the average income earned by the taxpayer from these subsidiaries constitutes less than 10% of the subsidiaries' average gross income; (c) the income is already included in the denominator of the taxpayer's sales factor; and (d) the taxing state's apportionment formula is already externally and internally consistent?

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BRIEF IN OPPOSITION

The Taxation and Revenue Department of the state of New Mexico respectfully requests that this Court deny the Petition for a Writ of Certiorari filed by the NCR Corporation.

STATEMENT OF THE CASE

Appellant NCR Corporation, a United States corporation, challenges New Mexico's authority to include in NCR's apportionable income amounts NCR received as royalties from patents, interest on loans, and dividends from its foreign

subsidiaries.[1] New Mexico is not attempting to tax any of the income of the foreign subsidiaries. Instead, it is imposing its tax on what both parties agree is NCR's "business income" as defined under New Mexico law because it "arises from transactions and activities in the regular course of NCR's trade or business" operations. Findings of Fact, ¶ 8 (App. B at 23a). *See* Section 7-4-2(A) NMSA 1978 defining "business income." Both sides also agree that NCR's income that New Mexico seeks to tax comes from subsidiaries that are in all respects unitary with NCR. Findings of Fact, ¶¶ 5-8 (App. B at 21a-23a). Finally, there is no dispute that this dividend, royalty and interest income was NCR's income and was included in NCR's federal taxable income each year at issue here. Findings of Fact, ¶ 10 (App. B at 23a). Nonetheless, NCR claims that New Mexico cannot tax an apportioned share of this income because some foreign countries have imposed or may claim a right to impose an unapportioned tax on this income.

New Mexico's method of taxing corporate income works in fundamentally the same manner as that of the majority of states. *See* Court of Appeals decision below, 856 P.2d at 985, Appendix A to the Petition for a Writ of Certiorari at 5a. The state taxes U.S. corporations doing business in New Mexico by apportioning to New Mexico a very small share (reflecting the proportion of business done in New Mexico) of their total income reported to the federal government and then applying New Mexico's corporate tax rate to the resulting taxable

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[1]See stipulated Findings of Fact ¶¶ 1-14, adopted by the Hearing Officer below and set forth in Appendix B to the Petition for A Writ of Certiorari at pp. 20a-25a, for a description of NCR's worldwide integrated business. Hereinafter, all references to the Findings of Fact will be accompanied by a page reference to Appendix B.

income.[2] For the years at issue in this case, New Mexico imposed tax on between 0.3307% and 0.2207% of NCR's annual federal taxable income. *See* New Mexico's apportionment factors set forth in Findings of Fact ¶ 36 (App. B at 36a).

Fundamentally, NCR's various arguments as to why New Mexico cannot tax its foreign source income are merely stale wine in new bottles. Over a decade ago, Mobil Oil Corporation and Container Corporation each made the same arguments and each failed to convince this Court. *Mobil Oil Corp. v. Comm'r of Taxes of Vermont*, 445 U.S. 425 (1980), and *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159 (1983).

Now NCR Corporation tries to distinguish its situation from those presented to the Court by the Mobil Oil and Container corporations. However, the distinctions it draws do not amount to a constitutional difference. Both the Court of Appeals and the Hearing Officer below recognized this and rejected NCR's

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[2]New Mexico statutes require calculation of corporate income tax by the following method:

1. start with federal taxable income,
2. deduct foreign dividend gross-up, income from United States obligations, and "non-business" income allocated to other states,
3. apportion this New Mexico apportionable income in accordance with the three factor formula specified by the Uniform Division of Income for Tax Purposes Act (UDITPA), and
4. apply the tax rate to this New Mexico taxable income to arrive at the tax due.

See Uniform Division of Income for Taxation Purposes Act (UDITPA) Sections 7-2A-2(C), 7-2A-2(J)(2), 7-2A-8, 7-4-10 through 7-4-18, 7-2A-3 NMSA 1978.

arguments in well-reasoned decisions. Moreover, over the last few years NCR has tried identical arguments in three other state appellate courts and lost. *NCR Corporation v. Commissioner of Revenue*, 438 N.W.2d 86 (MN 1989), *cert. denied*, 493 U.S. 848 (1989) (hereinafter "*NCR (Minnesota)*"); *NCR Corporation v. South Carolina Tax Commission*, 402 S.E.2d 666 (SC 1991) (hereinafter "*NCR (South Carolina)*"); and *NCR Corporation v. Comptroller of the Treasury*, 544 A.2d 764 (MD 1988) (hereinafter "*NCR (Maryland)*").

REASONS FOR DENYING THE WRIT

The Petition for a Writ of Certiorari should be denied for the following reasons. As to NCR's Foreign Commerce Clause claim, the decision by the New Mexico Court of Appeals correctly relies on this Court's decision in *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159 (1983). *See also Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue and Finance*, ___ U.S. ___, 112 S. Ct. 2365 (1992). This case does not raise significant issues which were not addressed in *Container* and *Kraft* (112 S. Ct. at 2371, n. 23). In addition, this Court previously denied NCR's Petition for a Writ of Certiorari raising virtually identical issues in *NCR (Minnesota)*, 493 U.S. 848 (1989). Moreover, the state courts which have considered the Foreign Commerce Clause issues raised here by NCR have unanimously ruled that state taxing schemes like New Mexico's are constitutional under *Container*. *See NCR (Minnesota)*, 438 N.W.2d at 93-95; *NCR (South Carolina)*, 402 S.E.2d at 669-672; *Tambrands, Inc. v. State Tax Assessor*, 595 A.2d 1039, 1042 (Me. 1991).

New Mexico is taxing only its apportioned share (between one-third and one-fifth **of one percent**) of the income of a United States corporation which: 1) has substantial contacts with New Mexico, 2) engages in its unitary business in New

Mexico, and 3) enjoys the benefits of the civilized business environment New Mexico provides. The income of the foreign subsidiaries, themselves, is not being taxed by New Mexico and is not involved here at all. NCR's argument—that a foreign country's decision to tax a U.S. corporation on a portion of its earnings constitutionally ousts states' taxing authority—cedes far too much of states' sovereignty to other countries in the name of protecting United States corporations from taxation.

If Congress wanted to put an end to state taxation of domestic corporations' income, including income from foreign sources, it could stop it. However, Congress has not seen fit to do so. "Congress has long debated, but has not enacted, legislation designed to regulate state taxation of income." *Mobil Oil*, 445 U.S. at 448-449 (lengthy citation to congressional debates omitted). Neither federal statutes nor treaties prohibit imposition of a state's tax on this income. Here, as in *Container*, there are no "specific indications" of congressional intent to pre-empt state taxation of foreign dividends, royalties or interest received by United States parent corporations. 463 U.S. at 196-197. In both *Mobil Oil* and *Container* this Court ascribed the proper meaning to congressional inaction and allowed this type of taxation by the states to stand.

Finally, there are strong administrative concerns weighing against the adoption of NCR's proposal that any income arguably from a foreign source and arguably subject to the potential of a foreign tax cannot be taxed at all by the states. In *Mobil Oil*, where only dividends were at issue, the Court noted:

> nothing about the logic of Mobil's position is limited to dividend income. The same contention could be advanced about any income arguably earned from foreign commerce. If appellant's argument were

> accepted, state taxing commissions would face substantial difficulties in attempting to determine what income does or does not have a foreign source.

445 U.S. at 447. In this case, NCR seeks to extend that argument to interest and royalty payments, but NCR's argument could extend as well to income it receives from any sale of services or property in international commerce. This argument was rejected by the Court in *Container* and *Mobil Oil*.

As to NCR's Due Process claim that it is entitled to include the entire property, payroll and sales of its foreign subsidiaries in its apportionment factors, the Court of Appeals below did not break new constitutional ground, but properly applied long-settled constitutional principles of state taxation set forth in *Hans Rees' Sons, Inc. v. North Carolina ex rel. Maxwell*, 283 U.S. 123 (1931), and *Mobil Oil*, in upholding New Mexico's apportionment method. Indeed, New Mexico's method of apportioning NCR's income is the "benchmark" method endorsed by the Court in *Container*, 463 U.S. at 170, and it is both externally and internally consistent as applied.

In addition, the determination whether factor representation is required always calls for a case by case, fact-specific analysis which will be different for each taxpayer. Here, the determination below was dependant on the specific facts of this case which demonstrated neither gross distortion nor internal inconsistency. Moreover, the only factor relief requested below by NCR was the inclusion in its apportionment factors of the **entire** property, payroll and sales of these foreign subsidiaries, even though only a small portion of those subsidiaries' income was paid to NCR and included in the apportioned base. What-is-more, New Mexico has already provided NCR factor representation by including all this foreign source income in the denominator of the sales factor, thereby reducing significantly

NCR's New Mexico apportionment factor. Thus, any ruling here is likely to turn on these specific facts and not necessarily be more broadly applicable.

Finally, to the extent some state courts have recognized that factor adjustment may be appropriate in some circumstances, few courts have determined the type and extent of adjustment necessary and wide latitude has been given the states.[3] Accordingly, the Court should await further development of factor representation models and legal principles by the state courts before determining whether to accept this issue for review.

I. THE COURT OF APPEALS CORRECTLY RELIED ON THIS COURT'S FOREIGN COMMERCE CLAUSE JURISPRUDENCE TO ALLOW STATE TAXATION OF NCR'S UNITARY "FOREIGN SOURCE" INCOME.

NCR's entire argument relies on the application of the Commerce Clause[4] of the United States Constitution to one case: *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979). But this reliance is misplaced. The controlling case regarding application of the Foreign Commerce Clause to state corporate income taxation is *Container*, not *Japan Line*. This is because *Japan Line* did not deal at all with corporate income

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[3]See, e.g., *Tambrands, Inc.*, 595 A.2d at 1045; *American Tel. & Tel. Co. v. Wisconsin Dep't of Revenue*, 143 Wis.2d 533, 422 N.W.2d 629, 636-637 (Ct. App. 1988).

[4]The Commerce Clause of the United States Constitution provides: "Congress shall have power ... to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. Const. Art. I, sec. 8, cl. 3.

taxation by the states or with a domestic taxpayer, but with an entirely different and very special situation: state imposition of an ad valorem property tax on cargo containers owned by Japanese companies which were instrumentalities of foreign commerce and which were temporarily located in California ports en route to other destinations. *Container*, by contrast, dealt exactly with state income taxation of an apportioned share of the income received by a U.S. corporation from foreign subsidiaries.

The tax at issue in *Container*, like the tax at issue here, was an apportioned corporate income tax imposed on a U.S. corporation doing business in the taxing state as well as other states and countries. Container Corporation complained, as does NCR here, that the inclusion of its foreign source income in the taxable income base apportioned by the states violated the Foreign Commerce Clause under the reasoning of *Japan Line* because foreign countries had already taxed the same income on an unapportioned basis.[5]

The Court in *Container* recognized that "the tax imposed here, like the tax imposed in *Japan Line*, has resulted in actual double taxation." 463 U.S. at 187. However, where actual double taxation of **property** ended the inquiry and invalidated the tax in *Japan Line*, the Court in *Container* considered the double taxation of **income** "clearly distinguishable" from what it had struck down in *Japan Line*. The Court allowed the

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[5]There is no dispute here about the elements of the test required by the Commerce Clause and applied by the Court in *Japan Line* and *Container*. *See Wardair Canada, Inc. v. Florida Dept. of Revenue*, 477 U.S. 1, 8 (1986). As in *Container*, the dispute between NCR and New Mexico in this case involves only the Foreign Commerce Clause concerns, not the four interstate Commerce Clause questions enumerated in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

state's "double taxation" of corporate income to stand. *Id.* at 187-197.[6]

In all relevant respects the instant case is indistinguishable from *Container*. First, this case involves a tax on NCR's income rather than a tax on property. *Container*, 463 U.S. at 188. *See also Mobil Oil* on this point: "[t]he reasons for allocation to a single situs that often apply in the case of property taxation carry little force" in the case of income taxation. 445 U.S. at 445.

Second, the circumstance causing the double taxation in *Container*—the interplay of two different taxation methods—are also present here, 463 U.S. at pp. 189-193. The Court in *Container* decided that under these circumstances double taxation of income is not dispositive, reasoning that resorting to one accounting method or another (arms-length/separate-accounting vs. world-wide unitary) would not eliminate all multiple taxation. *Id.* If double taxation of Container Corporation's income was permissible even though it could not be eliminated, then the fact that some[7] double taxation of NCR's income may occur in this case does not invalidate New Mexico's and all the other states' taxing systems. Moreover, it

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[6]In *Container* the Court also looked at the second prong of the *Japan Line* foreign commerce clause test and decided that, unlike the tax in *Japan Line*, California's corporate income tax did not prevent the Federal Government from speaking with one voice on foreign policy issues. NCR does not contest this prong of the test in its Petition.

[7]In fact, large amounts of NCR's foreign source income go untaxed every year. A comparison of the left hand columns of each of the tables set forth in Findings of Fact ¶¶ 29 and 30 (App. B at 29a-33a) reveals that in 1981, 37 percent of NCR's foreign source income was not taxed by any foreign country; in 1982: 52%; in 1983: 48%; in 1984: 50%; in 1985: 39%; in 1986: 43%; and in 1987: 27%.

is interesting to note that the federal tax returns of NCR show that it received a federal income tax credit that was greater than the taxes it paid to foreign governments.[8] Thus, as a practical matter, NCR has been paid back the taxes it paid to foreign countries and there is no double tax here at all.

The foreign and domestic taxing systems examined by the Court in *Container*—in which all of Container Corporation's income from its foreign subsidiaries was taxed by foreign governments and then an apportioned share of that very same income was taxed again by California—are similar to the taxing systems at issue in this case. NCR is simply wrong in arguing otherwise. Each foreign nation's allocation to itself of all of NCR's income earned in that nation for purposes of income taxation will always and necessarily overlap with every state's apportioned income tax system and result in the double taxation allowed by *Container*, whether the state taxes on the basis of worldwide combined accounting as used by California in *Container* or federal consolidated accounting as used by the United States and New Mexico here.

Third, as in *Container* but in contrast to *Japan Line*, New Mexico's tax falls on a corporation domiciled and headquartered in the United States and not on the foreign owners of an instrumentality of foreign commerce. *See Container*, 463 U.S. at 188. Here, New Mexico's tax is imposed on an apportioned part of the income of the United States parent company. New Mexico is not attempting to tax the foreign subsidiaries'

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[8] *Compare* the middle column with the two right hand columns in the table set forth in Findings of Fact ¶ 30 (App. B at 31a-33a).

income.[9] It is only when NCR is paid a dividend, royalty or interest by one of its foreign subsidiaries that those payments become part of NCR's base income, a part of which is apportioned by formula to New Mexico.

Finally, this case does not present discrimination of the kind recently struck down in *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 112 S.Ct. 2365 (1992).[10] Indeed, in *Kraft* the Court explicitly approved taxation of foreign source income for corporations like NCR who file as a federal consolidated taxpayer. 112 S.Ct. at 2371, note 23. As the Court put it, under these circumstances "it would be difficult

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[9]For all the years in question, NCR Corporation elected to file its New Mexico corporate income tax returns on a federal consolidated basis; therefore, the taxpayer in this case is NCR Corporation, on its own behalf and on behalf of the other corporations included in its federal consolidated group. (Under Section 7-2A-8.4 NMSA 1978, corporations have the option of filing with New Mexico on a federal consolidated basis, if they also file their federal income tax returns on that basis.) Under federal law, most subsidiaries incorporated in foreign countries may not be reported in the federal consolidated group. 26 U.S.C. § 1504(b). In fact, none of NCR's approximately 75 foreign subsidiaries engaged in trade or business in the United States during the tax years in question (1981 through 1987); consequently, they were not included in NCR's federal and New Mexico returns and New Mexico is not attempting to tax the income of these foreign subsidiaries. Thus, New Mexico's power to tax that income is not at issue in this case.

[10]In *Kraft* the corporation reported its taxes to Iowa as a "separate corporate entity" whose domestic subsidiaries' income was **not** taxed by Iowa unless the subsidiary did business in Iowa. Thus, when Iowa taxed the dividends Kraft General Foods received from its foreign (non-U.S.) subsidiaries, but did not tax either the dividends it received from its domestic subsidiaries nor any of the income of those subsidiaries, the Court concluded that Iowa discriminated against the taxpayer in violation of the Foreign Commerce Clause.

to say that Iowa discriminates against the business with the foreign subsidiary." *Id.*[11]

II. THE COURT OF APPEALS CORRECTLY DECIDED THAT THE UNITED STATES CONSTITUTION DOES NOT REQUIRE THAT NCR BE GRANTED ANY FURTHER ADJUSTMENT OF ITS APPORTIONMENT FACTORS.

New Mexico applies the UDITPA three-factor apportionment formula to determine a taxpayer's presence in the state, a formula this Court has termed "a benchmark against which other apportionment formulas are judged." *Container*, 463 U.S. at 170. New Mexico applies this three factor formula to the income of NCR, which is the federal consolidated group, and **not** to the income of the foreign subsidiaries. Under UDITPA, business income from intangibles (including dividends, royalties and interest) is included in the sales factor of the taxpayer. Therefore, New Mexico already provides NCR with factor representation for its foreign source income by including this income in the denominator of the sales factor and excluding all of this income from the numerator. Section 7-4-18 NMSA 1978.[12] Under UDITPA, the property, payroll and

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[11]This is because the entire income of all of NCR's domestic subsidiaries was included in the apportioned base taxed by New Mexico, while only a portion of the income of the foreign subsidiaries—that paid to NCR—was included.

[12]NCR's argument that it is entitled to factor representation whenever it receives payments from its foreign subsidiaries proves too much, for it cannot logically be limited to foreign subsidiaries or foreign sources. NCR's proposal would require factor adjustment whenever business income is received from sources outside the consolidated group. Thus, the

sales of an entity are included in the apportionment factor only when the income of that entity is being taxed. Unlike Container Corporation which was subject to California's apportionment of the world-wide combined income of Container and all its subsidiaries, domestic and foreign, NCR is not entitled to any additional factor representation because New Mexico is not including in its apportionable base any of the income of the foreign subsidiaries.

Furthermore, NCR's request to include in its apportionment factors 100% of the property, payroll and sales of these foreign subsidiaries is totally unjustified. On average, less than 10% of the gross income of these companies is paid to NCR as dividends, interest and royalties, Findings of Fact ¶¶ 29 and 40 (App. B at 30a and 38a, respectively). Nowhere does NCR explain why they are entitled to dilute the states' apportioned share by including 100% of the foreign subsidiaries' factors when less than 10% of the income arguably produced by these factors was paid to NCR and therefore included in the apportionable base.

In *Container* the Court outlined two tests to aid in determining if an apportionment formula fairly taxes corporate income attributable to activity in the state. One test is the external consistency test, which asks whether the apportioned share of NCR's income being taxed by New Mexico is "out of all appropriate proportion" to the business done in the taxing state or leads to a "grossly distorted result." *Mobil Oil*, 445

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taxation of interest from NCR's overnight investments of working capital would presumably call for factor adjustment to include the factors of the payor bank. Taxation of royalty payments from the sale of NCR's optical scanning technology to a non-affiliated computer company would presumably call for the inclusion of the computer company's factors. But this is not how UDIPTA works.

U.S. at 436-437; *Container*, 463 U.S. at 170 and 180-181.

The Court has given considerable leeway to the states to apply this standard. On the one hand, this Court has invalidated an apportionment formula that resulted in a more than 250 percent difference between the taxpayer's reasonable alternative formula and the state's formula. *Hans Rees' Sons, Inc.*, 283 U.S. at 134. On the other hand, the Court allowed a state's apportionment formula to stand in the face of a 14 percent difference between the state's apportionment formula and a reasonable alternative because it decided that such a difference was "certainly within the margin of error inherent in any method of attributing income among the components of a unitary business." *Container*, 463 U.S. at 184.

The income attributed to New Mexico under the UDITPA formula is directly proportionate to NCR's intrastate values (indeed, that is precisely what the three-factor formula assures) and it is anything but a gross distortion of the taxable income produced using reasonably adjusted factors. *See Container*, 463 U.S. at 169-170. The difference between New Mexico's UDITPA formula apportionment and a reasonable version of NCR's alternative to the state's formula ranged between four and thirteen percent (seven percent overall), a difference that is well "within the substantial margin of error" permitted by the Supreme Court.[13] *Container*, 463 U.S. at 184. In fact, it

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[13]The modified formula used as a model by the hearing officer below (and affirmed by the Court of Appeals) to determine whether constitutionally significant distortion existed under the standard application of UDITPA added a percentage of the factors of the foreign subsidiaries equal to the percentage of their gross income actually paid to NCR. App.B at 60a-61a. (Note: the figures in the text above correct to NCR's favor a small error in the hearing officer's numbers.) *See, NCR (Maryland)*, 544 A.2d at 781; *Tambrands*, 595 A.2d at 1045.

appears that New Mexico has "slic[ed] a shadow" with a great deal of precision. *Container*, 463 U.S. at 192. *See also NCR (Minnesota)*, 438 N.W.2d at 93.

Significantly, two out of the three state courts which have recently determined the need for factor representation (and on which NCR relies in its Petition) based their decisions on the fact that the specific taxing schemes before them yielded tax liabilities which were out of all appropriate proportion to the companies' business contacts with the taxing states. *American Tel. & Tel. Co.*, 422 N.W.2d at 636; *Homart Dev. Co. v. Norberg*, 529 A.2d 115, 120-121 (R.I. 1987). Only *Tambrands* was decided (by a 2-1 majority) on the novel theory that factor representation is always required. New Mexico believes the well-reasoned dissent in *Tambrands* was correct.[14]

The second test outlined in *Container* is the internal consistency test, which asks whether the apportionment formula being challenged, if applied in all the states in which NCR's unitary business operates, would result in more than 100% of NCR's income being taxed. 463 U.S. at 169. Here, there is no dispute that New Mexico's apportionment formula mathematically cannot result in more than 100% of its income being taxed by the states.[15]

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[14]*See also NCR (South Carolina)*, 402 S.E.2d at 674, and *NCR (Maryland)*, 544 A.2d at 781-782, which decided there were insufficient facts in the record to rule on the apportionment challenge and remanded with instructions to the lower courts that they determine whether or not the state taxes resulted in gross distortion.

[15]The UDITPA apportionment formula requires the creation of three fractions: the value of a corporation's property in a given state (the property numerator) divided by its property everywhere (the property denominator), its payroll in that state (the payroll numerator) divided by

Nonetheless, NCR asks this Court to adopt a totally new constitutional requirement: that it be allowed factor representation as a matter of law, even if New Mexico's tax meets both the internal and external consistency tests set forth in *Container*. NCR gets to this point by seeking to have every jurisdiction in the entire world in which it does business included in the internal consistency test. This Court has never intimated that this result is required by the Constitution; nor is it logical for it to reach this result.

Neither this Court nor the Constitution can compel foreign countries to fairly apportion income among all taxing jurisdictions—can compel, that is, international internal consistency. The only way the Court could ensure that no multiple taxation would result from the combined effect of apportionment of income by states and allocation of income by foreign jurisdictions would be to allow foreign taxation to oust state authority to tax by prohibiting inclusion in the apportionable base of foreign source income entirely. This Court has already rejected that course in *Container* and *Mobil Oil*.

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its payroll everywhere (the payroll denominator), and its sales in that state (the sales numerator) divided by its sales everywhere (the sales denominator)—which are then added together and divided by three to arrive at the fraction of the corporation's total apportionable income which can be taxed by any given state. Sections 7-4-10 through 7-4-18 NMSA 1978. Mathematically, this formula ensures that the sum of all states' factors will never equal more than 100%.

CONCLUSION

For the reasons stated above, NCR's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

TOM UDALL
New Mexico Attorney General
DANIEL YOHALEM
Counsel of Record
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504
(505) 827-6070

BRUCE J. FORT
FRANK D. KATZ
Sp. Asst. Attorneys General
Taxation and Revenue Dept.
P.O. Box 630
Santa Fe, NM 87509-0630
(505) 827-0731

Counsel for Respondent